

INLAND WETLANDS
AND
WATERCOURSES REGULATIONS
OF THE
TOWN OF NEWINGTON



TABLE OF CONTENTS

Section 1 – Title and Authority	2
Section 2 - Definitions	3
Section 3 – Inventory of Inland Wetlands and Watercourses.....	6
Section 4 – Permitted Uses as of Right and Non-regulated Uses	7
Section 5 – Activities Regulated Exclusively by the Commissioner of Environmental Protection	8
Section 6 – Regulated Activities to be Licensed.....	9
Section 7 – Application Requirements	10
Section 8 – Application Procedures.....	16
Section 9 – Public Hearings.....	17
Section 10 – Considerations for Decision	17
Section 11 – Decision Process and Permit.....	19
Section 12 – Action by Duly Authorized Agent.....	20
Section 13 – Bond and Insurance.....	23
Section 14 - Enforcement.....	23
Section 15 - Amendments	24
Section 16 – Appeals	25
Section 17 – Conflict and Severance.....	26
Section 18 – Other Permits.....	26
Section 19 – Application Fees.....	26
Section 20 – Effective Date of Regulations.....	28

- 1.5 The Agency shall enforce the Inland Wetlands and Watercourses Act and shall issue, issue with terms, conditions, limitations or modifications, or deny permits for all regulated activities in the Town of Newington pursuant to sections 22a-36 to 22a-45, inclusive, of the Connecticut General Statutes, as amended.

Section 2 - Definitions

- 2.1 As used in these regulations:

"Act" means the Inland Wetlands and Watercourses Act, sections 22a-36 through 22a-45, inclusive, of the Connecticut General Statutes, as amended.

"Agency" means the Conservation Commission of the Town of Newington.

"Bogs" are watercourses distinguished by evergreen trees and shrubs underlain by peat deposits, poor drainage, and highly acidic conditions.

"Clear-cutting" means the harvest of timber in a fashion which removes all trees down to a two inch diameter at breast height.

"Commissioner of Environmental Protection" means the commissioner of the State of Connecticut Department of Energy and Environmental Protection (DEEP).

"Continual flow" means a flow of water which persists for an extended period of time; this flow may be interrupted during periods of drought or during the low flow period of the annual hydrological cycle, June through September, but it recurs in prolonged succession.

"Deposit" includes, but shall not be limited to fill, grade, dump, place, discharge or emit.

"Discharge" means emission of any water, substance, or material into waters of the state whether or not such substance causes pollution.

"Essential to the farming operation" means that the proposed activity is necessary and indispensable to sustain farming activities on the farm.

"Farming" shall be consistent with the definition as noted in section 1-1(q) of the Connecticut General Statutes.

"Feasible" means able to be constructed or implemented consistent with sound engineering principles.

"License" means the whole or any part of any permit, certificate of approval or similar form of permission which may be required of any person by the provisions of sections 22a-36 to 22a-45, inclusive.

"Low impact development techniques" mean the application of site design and stormwater management (such as, but not limited to, infiltration of rainwater, treatment of stormwater runoff, and runoff attenuation) in order to mimic the hydrologic conditions associated with an undeveloped site. Such techniques may be

“Upland review area” means the area of land within one hundred (100) feet measured horizontally from the boundary of any wetland or watercourse **or land within two hundred (200) feet of any vernal pool.** (See also Regulated Activity.)

“Vernal Pool” means a watercourse consisting of a confined basin depression which contains a small body of standing water, usually drying out for part of the year during warm weather. It can be natural or man-made, and usually lacks a permanent outlet or any fish population. Further, the occurrence of one or more of the obligatory species which include fairy shrimp, spotted salamander, Jefferson salamander, marbled salamander, wood frog, and eastern spadefoot toad are necessary to conclusively define the vernal pool.

"Waste" means sewage or any substance, liquid, gaseous, solid or radioactive, which may pollute or tend to pollute any of the wetlands or watercourses of the Town.

"Watercourses" means rivers, streams, brooks, waterways, lakes, ponds, marshes, swamps, bogs, and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon the Town or any portion thereof not regulated pursuant to sections 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes. Intermittent watercourses shall be delineated by a defined permanent channel and bank and the occurrence of two or more of the following characteristics: (a) evidence of scour or deposits of recent alluvium or detritus, (b) the presence of standing or flowing water for a duration longer than a particular storm incident, and (c) the presence of hydrophytic vegetation.

"Wetlands" means land, including submerged land as defined in this section, not regulated pursuant to sections 22a-28 through 22a-35, inclusive, of the Connecticut General Statutes, which consists of any of the soil types designated as poorly drained, very poorly drained, alluvial, and floodplain by the National Cooperative Soils Survey, as may be amended from time to time, of the Natural Resources Conservation Service of the United States Department of Agriculture (USDA). Such areas may include filled, graded, or excavated sites which possess an aquic (saturated) soil moisture regime as defined by the USDA Cooperative Soil Survey.

Section 3 – Inventory of Inland Wetlands and Watercourses

- 3.1 The map of wetlands and watercourses entitled "Inland Wetlands and Watercourses Map, Newington, Connecticut" delineates the general location and boundaries of inland wetlands and the general location of watercourses. Copies of this map are available for inspection at the office of the Town Clerk or the Agency. In all cases, the precise location of regulated areas shall be determined by the actual character of the land, the distribution of wetland soil types and location of watercourses. The Agency may use aerial photography, remote sensing imagery, resource mapping, soils maps, site inspection observations or other information in determining the location of the boundaries of wetlands and watercourses.
- 3.2 Any person may petition the Agency for an amendment to the map. All petitions for a map change shall be submitted in writing and shall include all relevant facts and circumstances which support the change. The petitioner shall bear the burden of proof regarding the proposed map amendment. Such proof may include, but not limited to,

- 7.2 If an application to the Town of Newington Planning and Zoning Commission for subdivision or resubdivision of land involves land containing a wetland or watercourse, the applicant shall, in accordance with section 8-3(g), 8-3c, or 8-26, as applicable, of the Connecticut General Statutes, submit an application for a permit to the Agency in accordance with this section, no later than the day the application is filed with such planning and zoning commission.
- 7.3 The application shall contain such information as is necessary for a fair and informed determination thereon by the Agency.
- 7.4 A prospective applicant may request the Agency to determine whether or not a proposed activity involves a significant impact activity.
- 7.5 All applications shall include the following information in writing or on maps or drawings:
- a.the applicant's name, home and business mailing addresses and telephone numbers; if the applicant is a Limited Liability Corporation or a Corporation the managing member's or responsible corporate officer's name, address, and telephone number;
 - b.the owner's name, mailing address and telephone number and written consent signed by the land owner if the applicant is not the owner of the land upon which the subject activity is proposed;
 - c.the applicant's interest in the land;
 - d.the geographical location of the land which is the subject of the proposed activity and a description of the land in sufficient detail to allow identification of the inland wetlands and watercourses, the area(s) (in acres or square feet) of wetlands or watercourses to be disturbed, soil type(s), **wetland vegetation, and known or possible vernal pools;**
 - e.the purpose and a description of the proposed activity and proposed erosion and sedimentation controls and other management practices and mitigation measures, such as low impact development techniques, which may be considered as a condition of issuing a permit for the proposed regulated activity including, but not limited to, measures to (1) prevent or minimize pollution or other environmental damage, (2) maintain or enhance existing environmental quality, or (3) in the following order of priority: restore, enhance and create productive wetland or watercourse resources;
 - f.alternatives, including low impact development techniques, which would cause less or no environmental impact to wetlands or watercourses and why the alternative as set forth in the application was chosen; all such alternatives shall be diagramed on a site plan or drawing;
 - g.a site plan showing the proposed activity and existing and proposed conditions in relation to wetlands and watercourses and identifying any further activities associated with, or reasonably related to, the proposed regulated activity which are made inevitable by the proposed regulated activity and which may have an impact on wetlands or watercourses;
 - h.names and mailing addresses of adjacent land owners;
 - i.statement by the applicant that the applicant is familiar with all the information provided in the application and is aware of the penalties for obtaining a permit through deception or through inaccurate or misleading information;

- 7.11 For any permit application involving property subject to a conservation restriction or preservation restriction, the following shall apply.
- a.for purposes of this section, “conservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.
 - b. for purposes of this section, “preservation restriction” means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land, including, but not limited to, the state or any political subdivision of the state, or in any order of taking of such land whose purpose is to preserve historically significant structures or sites.
 - c.no person shall file a permit application, other than for interior work in an existing building or for exterior work on an existing building that does not expand or alter the footprint of such existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction, including, but not limited to, any state agency that holds such restriction, not later than sixty (60) days prior to the filing of the permit application.
 - d.in lieu of such notice pursuant to subsection 7.11c, the applicant may submit a letter from the holder of such restriction or from the holder’s authorized agent, verifying that the application is in compliance with the terms of the restriction.

7.12 Vernal Pool Indicators

- a. **Direct Indicators: The species listed under categories 1 and 2 require vernal pools for successful reproduction. They are recognized as obligate vernal pool species. They serve as direct indicators for the existence of a vernal pool ecosystem. Documentation of vernal pool utilization by these species is the most reliable method of identifying vernal pool ecosystems.**

Either one of the following categories will confirm the existence of a vernal pool ecosystem:

- 1. **Category 1 – Vertebrates: The existence of a seasonal or permanent watercourse in a defined depression or basin that lacks a fish population, and shows evidence of breeding and/or development by any of the following obligate vernal pool breeding species:**

- a. **Spotted salamander (*Ambystoma maculatum*)**
- b. **Jefferson salamander complex (*Ambystoma Jeffersonianum* x *laterale* hybrid)**
- c. **Marbled salamander (*Ambystoma opacum*)**
- d. **Wood frog (*Rana sylvatica*)**

As required by this method of identification, evidence of breeding and/or development for these obligate species include one or more of the following:

Breeding:

1. Presence of breeding adults
 - a. Wood frog – breeding chorus and/or mated pairs
 - b. Obligate salamander – courting individuals and/or spermatophores
2. Two or more egg masses of any of the above-named species

Development:

3. Presence of tadpoles or larvae of the above species
4. Presence of transforming larvae and/or juveniles
 - a. Wood frog – tail stub event
 - b. Obligate salamanders – gill remnants evident

2. Category 2 – Invertebrates:

Existence of a seasonal or permanent watercourse in a defined depression basin that lacks a fish population and contains fairy shrimp (*Anostraca* sp.) or their eggs therein.

- b. **Indirect Indicators:** In the absence of direct indicators (typically when the pool may be dry from late summer through early fall, during winter, or when climatic or landscape conditions inhibit the presence of direct indicators), the following indirect indicators may be used to gauge the likelihood that a watercourse is capable of supporting obligate vernal pool species. To be clear, it is intended that these indicators can be used to conclude, for regulatory purposes, that a particular watercourse is a vernal pool, but they cannot be used to absolutely confirm its presence, as a developing obligate vernal pool species would. The more direct indicators present (especially indirect indicators “a” through “d”), the greater the likelihood that a particular watercourse is a vernal pool capable of supporting obligate vernal pool species.

Existence of a defined depression or basin that exhibits:

- a. Fingernail clam shells, snail shells, caddisfly cases, diving beetles or evidence of other aquatic invertebrates, among leaf litter
- b. Presence of algal strands hanging over branches, or silt-stained leaves attached to overhanging branches, at or below the historic high-water mark of the dry basin
- c. Dense wetland plant growth (e.g. buttonbush, bur-reed, etc.) in the interior of the basin or depression
- d. A distinct waterline on the base of tree trunks or shrubs in the basin
- e. Discolored water-stained “gray” leaf litter within the basin as distinguished from the “brown” leaves on the adjacent upland floor
- f. Hummocks supporting moss, grass, sedges or woody growth along the edge of the basin or depression

- g. Unvegetated, lo-lying area or areas in the basin interior
- h. Standing water or ice in the winter

Items “a” through “d” are to be considered strong indicators that show a higher probability for the existence of a vernal pool that holds water for a long enough period to support breeding and development of obligate species. Items “e” through “h” are indicators that might signify the presence of a vernal pool but do not provide sufficient evidence that the pool holds water long enough to support breeding and development of obligate species.

Section 8 – Application Procedures

- 8.1 All petitions, applications, requests or appeals shall be submitted to the Conservation Commission of the Town of Newington.
- 8.2 The Agency shall, in accordance with Connecticut General Statutes section 8-7d(f), notify the clerk of any adjoining municipality of the pendency of any application, petition, appeal, request or plan concerning any project on any site in which:
 - a.any portion of the property affected by a decision of the Agency is within five hundred (500) feet of the boundary of the adjoining municipality;
 - b.a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
 - c.a significant portion of the sewer or water drainage from the project on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; and/or
 - d.water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality.

Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven (7) days of the date of receipt of the application, petition, appeal, request or plan.
- 8.3 When an application is filed to conduct or cause to be conducted a regulated activity upon an inland wetland or watercourse, any portion of which is within the watershed of a water company as defined in section 25-32a, the applicant shall provide written notice of the application to the water company and the Commissioner of Public Health in a format prescribed by said commissioner, provided such water company or said commissioner has filed a map showing the boundaries of the watershed on the land records of the municipality in which the application is made and with the inland wetlands agency of such municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed not later than seven (7) days after the date of the application. The water company and the Commissioner of Public Health, through a representative, may appear and be heard at any hearing on the application.
- 8.4 The date of receipt of a petition, application, request or appeal shall be the day of the next regularly scheduled meeting of the Agency, immediately following the day of submission to the Agency or its agent of such petition, application, request or appeal or thirty-five (35) days after such submission, whichever is sooner. At that time the application will be assigned a file number.